

DEPARTMENT OF ENVIRONMENTAL PROTECTION Monthly Enforcement Report for actions during July 2012

DISTRIBUTED: September 11, 2012

This report has been prepared to satisfy a statutory obligation the Maine Department of Environmental Protection has to inform the public of certain enforcement resolutions. Please contact Peter Carney at (207) 287-4305 or peter.j.carney@maine.gov for additional information regarding the activities listed in this report.

The following cases were resolved to achieve compliance with the law; remediate environmental damage; restore natural resources to appropriate conditions; and impose penalties to deter similar actions in the future.

Administrative Consent Agreements Approved by the Commissioner and Office of the Attorney General (party followed by location):

Air:

Woodland Pulp LLC, Baileyville, Maine. Woodland Pulp LLC ("Woodland Pulp") violated the Department's rule for *Total Reduced Sulfur Control from Kraft Pulp Mills* and a provision of its Department-issued air emission license by exceeding the facility's license limit for TRS venting. In addition, Woodland Pulp violated its air emission license by: failing to meet uptime requirements for the facility's High Volume Low Concentration Collection and Control System; exceeding license limits for sulfur dioxide, nitrogen oxide, and carbon monoxide; failing to meet the facility's #9 power boiler venturi scrubber operation requirement; failing to meet the facility's Bleach Plant Scrubber operation requirement; and failing to meet the facility's Recovery Boiler Smelt Tank Scrubber uptime operating requirement. To resolve the violations, Woodland Pulp paid \$11,850.00 as a civil monetary penalty.

Land:

Oxford County Agricultural Society, Rupert Grover, Suzanne Grover, and McGee Construction, LLC, Oxford and Norway, Maine. An initial inspection by Department staff of a project being constructed on three properties revealed that approximately nine acres had been disturbed on portions of the three properties. A followup inspection by Department staff revealed that an additional 7.5 acres had been disturbed, bringing the total area of disturbance to 16.5 acres. By constructing a project including one acre or more of disturbed area without obtaining a permit from the Department, Oxford County Agricultural Society ("OCAS"), Rupert Grover and Suzanne Grover ("the Grovers"), and McGee Construction, LLC ("McGee Construction") violated Maine's Stormwater Management law. The soil disturbance included the filling of approximately 14,870 square feet of freshwater wetland and an additional 58,610 square feet of wetland that had been cut but not yet stumped and grubbed. By conducting an activity involving the removal of vegetation, filling, and displacing soil in a freshwater wetland without first obtaining a permit from the Department, OCAS and McGee Construction violated Maine's Natural Resources Protection Act ("NRPA"). A second follow-up inspection revealed that a stream crossing consisting of a bridge had been constructed over Cold Water Brook. By performing or causing to be performed the construction of a permanent structure over a river, stream, or brook without first obtaining a permit from the Department, OCAS, the Grovers, and McGee Construction violated the NRPA. At the time of the Department's initial and follow-up inspections of the project, and three additional subsequent inspections, erosion controls were in place but were not installed in accordance with the Department's Best Management Practices and soil material was actively washing into the freshwater wetland and/or Cold Water Brook. By conducting an activity that involves filling, displacing, or exposing soil or other earthen materials without taking measures to prevent unreasonable erosion of soil from the project site or into a protected natural resource, and by discharging soil to waters of the State, OCAS, the Grovers, and McGee Construction violated Maine's Erosion and Sedimentation Control law and Protection and Improvement of Waters law. A subsequent follow-up inspection revealed that additional erosion control devices were installed on the project site and the site was stable. While investigating the soil disturbance complaint, the Department received another complaint that a race track and accompanying buildings constructed by OCAS between 2003 and 2006 on



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the project site had been constructed without a permit from the Department. A review of aerial photography by Department staff determined that approximately 5.7 acres of new disturbed area had been created in 2003 for the racetrack, and an additional .046 acres of impervious surface was created between 2003 and 2006 for ancillary buildings. Department records reflect that representatives of OCAS were in contact with Department staff in 2002 concerning construction of the racetrack and whether Department permits would be required. The Department's record is inconclusive as to the ultimate determination as to whether Department permits were required in order to install the track, but evidence provided by OCAS indicates an understanding by OCAS that the Department concluded that no permits were required at the time for construction of the track. The law in effect at the time the track was constructed required a permit for the construction of a project of one acre or more of impervious area or five acres or more of disturbed area. By constructing a project of one acre or more of impervious area or five or more acres of disturbed area, the Stormwater Management law was not adhered to when the track was constructed in 2003. Subsequent to Department involvement, OCAS submitted an after-the-fact Stormwater Management law application for 16.7 acres of soil disturbance, an after-the-fact NRPA application to alter the 14,870 square feet of wetland, and an after-the-fact permit by rule notification to install the bridge crossing over Cold Water Brook. The Stormwater Management and permit by rule applications were approved by the Department, however, the NRPA application was denied. OCAS submitted a plan to restore the 14,870 square feet of freshwater wetland that had been filled and the 58,610 square feet of wetland that had been cut. Subsequently, Department staff conducted an inspection and determined that fill had been removed from the wetland, twenty-five trees had been planted in the disturbed area, and erosion control mulch had been spread over the exposed wetland soils in accordance with the restoration plan and to the satisfaction of Department staff. To resolve the violations, OCAS agreed to comply with the terms of its' after-the-fact Stormwater Management law permit for the soil disturbance, submit an after-the-fact Stormwater Management law application for construction of the race track and associated buildings, and paid a civil monetary penalty, on behalf of all parties, in the amount of \$40,000. An additional \$10,000 in civil monetary penalties was suspended and will be permanently waived provided OCAS satisfies the agreement terms concerning licensing of the race track.

Oil:

Marian O. Suster, Cape Elizabeth, Maine. Marian O. Suster ("Suster") violated provisions of Maine's *Oil Discharge Prevention and Pollution Control* law by discharging oil to a surface water drainage and to land adjacent to, on, or over waters of the State. Specifically, Suster discharged four to five quarts of used motor oil into a storm water drainage culvert on land owned by the Town of Cape Elizabeth. Cape Elizabeth public works staff responded to the site and removed the oil discharge. Suster paid \$575 to reimburse oil spill clean-up costs. To resolve the violation, Suster will pay the amount of \$1,700 as a civil monetary penalty pursuant to the terms of a payment plan.

District Court Enforcement Resolutions (party followed by location):

Land:

State of Maine, Department of Environmental Protection v. Joe Wayne Noble and Dorothy P. Noble, Arundel, Maine. Joe Wayne Noble and Dorothy P. Noble ("the Nobles") violated Maine's Natural Resources Protection Act by constructing, or causing to be constructed, permanent structures in, on, or over protected natural resources and adjacent to a river, stream, or brook without first obtaining a permit from the Department. In addition, the Nobles removed or displaced, or caused to be removed or displaced, soil, vegetation, or other materials in, on, or over protected natural resources or adjacent to a river, stream, or brook without first obtaining a permit from the Department. Specifically, two boardwalks and a deck were constructed in a freshwater wetland and a stream and



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vegetation and soil had been removed and disturbed in the freshwater wetland and stream. Subsequent to Department involvement, the Nobles removed the boardwalks and deck. In a Consent Decree and Order entered into by the parties and approved by the court, the Nobles agreed to apply wetland seed mix to the disturbed freshwater wetland and monitor the vegetation for two years and apply additional wetland seed mix as necessary until 95% vegetation coverage is established. The Nobles agreed to pay \$2,975 as a civil monetary penalty, of which \$1,000 will be paid pursuant to the terms of a payment plan, and \$1,975 was suspended and will be permanently waived provided the Nobles comply with all provisions detailed in the Consent Decree and Order.